

PORTLAND GENERAL ELECTRIC COMPANY
L. C. CURTRIGHT

IBLA 77-49

Decided March 9, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management (BLM), denying a petition for deferment of assessment work on certain mining claims, W-56091.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the surface of a claim or group of claims. That there has been no administrative determination of the validity of the claims, possible trespass actions are threatened, and there is a federal court suit pending concerning the claims, do not constitute "legal impediments" within the ambit of the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970), and a petition for deferment of assessment work will be denied.

APPEARANCES: Jay T. Waldron, Esq., Souther, Spaulding, Kinsey, Williamson, & Schwabe, Portland, Oregon, for petitioners.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Portland General Electric Company and L. C. Curtright have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 6, 1976, denying their petition for deferment of assessment work on certain mining claims.

During the months of June through August 1975, L. C. Curtright, as agent for Portland General Electric Company, located over 1,700 mining claims in Sweetwater County, Wyoming. The claims were located for uranium.

All the claims were located on lands which had been withdrawn for oil shale by Public Land Order 4522 dated September 13, 1968.

On July 16, 1976, appellants filed a petition for deferment of assessment work with BLM pursuant to the Act of June 21, 1949, 30 U.S.C. § 28b-e (1970) and 43 CFR Subpart 3852. Appellants claimed that "[l]egal impediments exist which affect the right of the claimant to enter upon the surface of the above claims," and that BLM had notified appellants that they did not have the legal right to enter upon the claims.

In addition, on September 3, 1976, appellants filed a complaint for declaratory judgment and injunction in the Federal District Court in Wyoming, Portland General Electric Company and L. C. Curtright v. Thomas Kleppe, Civil No. C76-155. Appellants were seeking a determination of the validity of the oil shale withdrawal. The suit is still pending.

In denying the petition BLM stated that appellants' mining claims were null and void ab initio. BLM concluded that appellants' Federal Court suit was "not the type of litigation exception envisioned in 30 U.S.C. § 28b as triggering the use of the assessment deferment statute." We agree.

[1] The pertinent regulation, 43 CFR 3852.1, which sets forth the conditions under which deferment may be granted reads as follows:

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

The regulation makes it clear that a deferment may be granted where legal impediments exist which affect the right of the claimant to enter upon the surface of the claims.

Herein, appellants assert that BLM threatened them with a trespass action if they proceeded with further assessment work and that, therefore, there is a legal impediment preventing them from complying with the necessary assessment work. Appellants also refer to

their federal court suit challenging the validity of the oil shale withdrawal.

Although BLM stated in its decision denying appellants' petition that the mining claims were null and void, there has been no official BLM decision determining the validity of appellants' claims. The question before the Board is whether appellants' petition should be granted in the face of possible trespass action by BLM and during the pendency of appellants' suit challenging the validity of the withdrawal.

It is clear that "other legal impediments" do not exist in this case which affect appellants' right to enter upon the surface of the claims. Under the circumstances herein appellants' petition for deferment should not be granted. There has been no administrative determination concerning the validity of the claims and there is a federal court suit pending challenging the validity of the withdrawal. However, the deferment statute is designed to grant relief where access to the claims is interdicted. In the case at bar, there has been no preclusion of access to the mining claims.

In addition, until a final determination of the validity of the claims in question, appellants, as locators, may be protected from other locators under the doctrine of pedis possessio. See Union Oil Co. v. Smith, 249 U.S. 337, 347 (1919). The key to pedis possessio is persistent, good faith work on a claim reasonably directed toward making a discovery of a valuable mineral deposit. 15 Rocky Mt. Min. Law Inst., 181, 192 (1969). The possibility of trespass actions herein does not deny appellants access to the claims in pursuing assessment work to protect themselves from other locators. Therefore, it is not proper to grant appellants the deferment they seek.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

